

HOUSE BILL REPORT

HB 1817

As Reported by House Committee On:

Insurance, Financial Services & Consumer Protection

Title: An act relating to adding an additional payment plan option for small loans.

Brief Description: Adding an additional payment plan option for small loans.

Sponsors: Representatives Kirby, Roach, Simpson, Strow, Santos, Rodne, Hurst, Kelley, Chase, Ericks, B. Sullivan, Hunt, Wallace, Haigh, Sells, Linville, Campbell, Green and Wood.

Brief History:

Committee Activity:

Insurance, Financial Services & Consumer Protection: 2/13/07, 2/15/07 [DPS].

Brief Summary of Substitute Bill

- Requires a lender to allow a borrower to convert the unpaid principal and fee with a lender into a payment plan once every 12 months. A licensee may not assess any additional charge to convert a loan into a payment plan.
- Extends the number of payments in a payment plan from three or more payments to four or more payments.

HOUSE COMMITTEE ON INSURANCE, FINANCIAL SERVICES & CONSUMER PROTECTION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Kirby, Chair; Kelley, Vice Chair; Roach, Ranking Minority Member; Strow, Assistant Ranking Minority Member; Hurst, Rodne, Santos and Simpson.

Staff: Jon Hedegard (786-7127).

Background:

Payday lending practices are regulated by the Department of Financial Institutions (DFI) under the Check Cashers and Sellers Act (Act), Chapter 31.45 RCW. The phrase "payday

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loan" refers to a type of short-term, unsecured loan that is typically offered to consumers by a business outlet offering check cashing services. In a typical payday loan transaction, the consumer writes the lender a post-dated check and, in return, the lender provides a lesser amount of cash to the consumer after subtracting interest and fees. Following this initial transaction, the lender holds the check for a specified period, during which the consumer has the option of either redeeming the check by paying the face amount to the lender or allowing the lender to cash the check after the loan period has expired.

The Act contains provisions for the licensing and regulation of businesses offering services related to check cashing and the selling of money orders, drafts, checks, and other commercial paper. The Act regulates payday lending practices and provides for regulation of licensees who are specifically authorized to issue small loans. No lender may lend more than \$700 to a single borrower at any one time. The lender may charge up to 15 percent for the first \$500. If the borrower has a loan in excess of \$500, the lender can charge up to 10 percent on the amount over \$500. For example, a lender could charge up to \$30 for a \$200 loan or up to \$85 for a \$600 loan.

Under the Act, licensees must maintain business books, accounts, and records. The books and accounts must be maintained for at least two years after a transaction. The DFI also has statutory authority to examine books, accounts, records, and files, or other information of licensees and persons that the agency has reason to believe is engaging in the business governed by Chapter 31.45 RCW.

Borrowers and lenders may agree to a payment plan for payday loans at any time. After four successive loans, and prior to default on the last loan, a borrower is entitled to convert his or her loans into a payment plan with the lender. Such payment plans are subject to the following conditions:

- a written agreement is required;
- the lender may charge the borrower a one-time fee in an amount up to the fee or interest on the outstanding principal;
- the agreement must allow the buyer not less than 60 days to pay off the loan; and
- the borrower must be allowed to pay off the loan in at least three payments.

The Director of the Department of Financial Institutions (Director) may impose the sanctions against any:

- licensee;
- applicant; or
- director, officer, sole proprietor, partner, controlling person, or employee of a licensee.

Sanctions may include:

- the denial, revocation, suspension, or conditioning of a license;
- an order to cease and desist from specific practices;
- the imposition of a fine not to exceed \$100 per day for each day's violation;
- the provision of restitution to borrowers or other injured parties; and
- the removal from office or banning from participation in the affairs of any licensee.

Summary of Substitute Bill:

Payment plans must allow the borrower to pay the total amount borrowed off in four or more payments. A lender may not assess a fee for a payment plan at the time the payment plan is established; it must be paid off in installments over the term of the payment plan.

In addition to the existing payment plan options, once every 12 months a borrower may convert the unpaid principal and fee with a lender into a payment plan. A licensee may not assess any additional charge to convert a loan into a payment plan. A licensee is only required to extend to each borrower one no additional cost payment plan during any twelve-month period of time. A new twelve-month period begins on the date that the payment plan is paid in full.

A borrower must return to the licensee's point of sale location and request a payment plan prior to the close of business on the business day before the due date of the loan. "Licensee's point of sale" is defined as:

- the licensee's store where the borrower obtained the loan;
- any other store operated by the licensee in Washington; or
- the method the borrower used to obtain the loan. This includes an internet web site, a telephone number, or any other remote means or method of communication.

An agreement for a payment plan must be in writing and acknowledged by the borrower and the licensee. Any agreement entered into after default on a small loan is not a payment plan.

The payment plan options must be conspicuously disclosed to a borrower. The disclosure must be:

- in twelve-point type;
- surrounded by a border with no other loan term in that border; and
- located on the same page as information required to be disclosed by the Federal Truth in Lending Act.

Substitute Bill Compared to Original Bill:

A lender may not assess a fee for a payment plan at the time the payment plan is established; it must be paid off in installments over the term of the payment plan. Additional language is included regarding the availability of a payment plan every 12 months. A cite is changed from RCW 31.45.0782 to RCW 31.45.073.

Appropriation: None.**Fiscal Note:** Not requested.**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) The Legislature should take appropriate steps to regulate this product but should not eliminate it as an option for people. Choice is important. If people have more options, they can make better decisions. My daughter has used these loans. These loans may cost a bit more for the convenience but they don't lead to the same type of debt as using a credit card. It also helped preserve her good credit. Expanding the payment plan options is a good idea. People can honor their debts. It gives them another method to get out of debt. Payment plans are not offered by other types of creditors like banks or credit card lenders. The disclosure must be in 12 point type. I think this should be 12 point type or larger. I have used this product. I wish I didn't have to but I needed that option when I was ill and missed work. I needed a payday loan and no one else was going to make me a similar loan. I would like to see the payment plan be required more often than every 12 months. This is a necessary option for people. The place I borrowed from was very helpful and explained all of my options to me. After a divorce, I ended up with an unexpected and considerable amount of credit card debt from my ex-spouse. I used payday loans as I tried to get a start-up business off the ground. I found these loans to be a better option than a credit card. A credit card allows the debtor to slide into ever-increasing future debt. A payday loan must be paid off on the due date. It instills discipline. It is a transparent transaction; a borrower knows exactly how much money the loan will cost. After a year of use, I was in a position where I didn't need to take out a loan. Eliminating this option will not help consumers. More competition is the key for lower rates, not greater regulation. The payment plan is welcome. It provides more flexibility to consumers. No other creditor does this for consumers. Adding an additional type of payment plan is an important consumer benefit. The proposed substitute is clearer than the underlying bill. It also eliminates the requirement that a consumer pay up front for a "four successive loan" payment plan. If a consumer can't pay off their loan, they may not be able to afford a fee to get a payment plan. This allows the fee to be paid off in the payment plan.

(Opposed) I have a relative who has taken out a number of these loans and is paying a huge amount in fees. He will use a work bonus to try to pay down some of the principal. The law allows lenders to require payments prior to a payday which creates the need for another loan. The interest charged on payday loans greatly exceeds the state usury rate. The lenders often target minority communities and military families. They want to keep borrowers in debt and create repeat customers. There is little competition on price. When this industry was legalized, it was thought that it would be a product that was used occasionally. Now, it is clear that the industry should be reined in. The original bill was unclear. The proposed substitute changes a cite and is clearer. Regardless, the bill is inadequate because it doesn't address the interest rate of the loans. In the 1960s, people in Washington fought to lower the rate that a lender could charge on a credit card to 12 percent. Eventually federal law preempted the state. The impact of payday loans on the military is undeniable. Congress applied a 36 percent interest cap on loans to military members. The state should look to protect others, including the mentally challenged. The state should lower the interest rate to 18 percent, limit the number of loans, and require the DFI to disclose the banks that created subsidiaries in this business. Please extend the types of protections that military members receive to all consumers. Not all tribes in Washington operate casinos. Many tribes don't

have significant resources. Many tribal members are forced to use products like these. No other type of lender is required to offer any type of payment plan; we already have one type of payment plan required by law. Our products are cheaper and more transparent than those offered by other types of lenders. Payday lenders already work with customers on payment plans. The bill is an unprecedented type of regulation. No landlord, utility, or creditor is required to offer a payment plan but a payday lender will have to provide a plan for a borrower that was loaned money to pay rent, a utility bill, or a credit card bill. The federal law and the Department of Defense rules will preempt the state on military issues. The federal law applies to all lenders and to all dependents of military members. The industry already has payment plan options. This bill will impact the lenders, especially the small lenders. It is unprecedented in the world of short-term credit. Adding additional regulations to the business of payday lending is a concern. Customers will use this option, they are smart. Providing this option will impact the profitability of a payday lender

Persons Testifying: (In support) Dawn Mason; Josephine Howell, First Place; Ralph Munro; Gary Macy; Michael Felts; Debra Bortner, Department of Financial Institutions; and Pamela Fann.

(Opposed) Barbara Sherry, West Seattle Unitarian Fellowship; Helen P. Howell; Michele Walker, Moneytree; Dennis Bassford, Moneytree Inc., and Financial Service Center; Mark Thomas, Moneytree Inc.; Darrel Wells, Paycheck Financial Centers; and Kevin McCarthy, Check Masters.

Persons Signed In To Testify But Not Testifying: None.